IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.11 OF 2004

Shri Shaligram Bachulal Tiwari. .. Petitioner
Vs.
M/s.Shree Sadguru Enterprise
& Ors. .. Respondents

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Shri Ram Ugrah Singh for the petitioner.

Shri R.P.Lote for respondent Nos.1 and 2.

Shri A.G.Damle for respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14th December, 2004.

P.C.

1. Heard the learned advocates for the parties. Perused the records.

2. The grievance of the petitioner is that the respondents in violation of the order of injunction passed by the Civil Court on 25th October, 2001 restraining the respondents from alienating, selling, disposing off or handing over the possession or creating any third party rights in respect of the flat Nos.1, 3 and 4 of Building No.7, Shree Sadguru Nagar,

Devipada, Western Express Highway, Borivali (East), Mumbai - 400 066, had inducted the third person in the flats Nos.3 and 4 as the same were found to be in occupation of the respondent Nos.3 and 4. Upon issuing the notice to the respondents, it has been disclosed that in terms of the agreement between the respondent Nos.1 and 2 on one hand and the respondent Nos.3 and 4 on the other hand, executed on 21st June, 2000, the flats in question were agreed to be sold to the respondent Nos.3 and 4 and they were required to give possession within two years from the date of the execution of the agreement. They also placed on record the certificate issued by the concerned authority regarding commencement of construction and the certificate in that regard is dated 28th July, 1999. They also placed on record the receipt regarding delivery of possession of the premises stating that the possession of the flats in question was delivered prior to the passing of the order dated 25th October, 2001, i.e. the possession of the premises was delivered on 15th September, 2001 in terms of the said receipt of possession.

3. It is pertinent to note that though the petitioner has alleged about the violation of the order dated 25th October, 2001 on account of

occupation of the flat Nos.3 and 4 by the respondent Nos.3 and 4, there was no disclosure of the delivery of possession of those flats to the said respondents nor as to when their presence was noted in those flats by the petitioner, admittedly, the petitioner also stays in the said property. The allegation that the petitioners were seen in those flats for the first time has been made only in the rejoinder dated 7th December, 2004 which was filed undisputedly after the disclosure of the agreement and receipt of possession by the respondents to the petitioner. Apparently, therefore, the said statement is after-thought and there is no material placed on record to disclose that the respondent Nos.3 and 4 were not seen in the premises or that they were not in possession of those flats prior to 25th October, 2001. In view of the documentary evidence regarding the delivery of possession of those flats prior to the order in question having been produced on record by the respondents, in the absence of any material in support of the contentions of the applicant, therefore, there is no case for proceeding against the respondents for contempt of Court. Hence, the petition is rejected. Notice stands discharged.